

**THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST**  
**REPUBLIC OF SRI LANKA**

Lokugam Hewage Nandawathie,  
No. 77D, Galle Road,  
Dehiwela.

CA 648/97(F)

D.C. Mount Lavinia Case No. 133/95P

**Plaintiff**

Vs.

1. W. Somawathie de Alwis
2. Adambarage Piyaseeli de Alwis
3. Adambarage Vineetha de Alwis
4. Adambarage Laxman de Alwis
5. Adambarage Nihal de Alwis
6. Adambarage Sarath de Alwis
7. Adambarage Priyanthi de Alwis
8. Adambarage Ananda de Alwis  
All of No. 77/2A, Wijesekara Road,  
Dehiwela.
9. Raja Sanath Kumara Fernando  
No. 77C, Galle Road,  
Dehiwela.

**Defendants**

**AND NOW BETWEEN**

1. W. Somawathie de Alwis  
(Deceased)
- 1A. Adambarage Ananda de Alwis

2. Adambarage Piyaseeli de Alwis
3. Adambarage Vineetha de Alwis
4. Adambarage Laxman de Alwis  
(Deceased)
- 4A. Adambarage Ruchira Saman de Alwis
5. Adambarage Nihal de Alwis
6. Adambarage Sarath de Alwis
7. Adambarage Priyanthi de Alwis  
(Deceased)
- 7A. Mohamed Hussain Mohamed Shakeer
8. Adambarage Ananda de Alwis  
All of No. 77/2A, Wijesekara Road,  
Dehiwela.

**Defendant – Appellants**

Vs.

Lokugam Hewage Nandawathie,  
No. 77D, Galle Road,  
Dehiwela.

**Plaintiff – Respondent**

9. Raja Sanath Kumara Fernando  
(Deceased)
- 9A. Vidanalage Prathiba Geethma Fernando,  
No. 77C, Galle Road,  
Dehiwela.

**Defendant – Respondents**

**BEFORE: M.M.A. GAFFOOR J.**

**S. DEVIKA DE LIVERA TENNEKOON J.**

**COUNSEL:**      **1<sup>st</sup> – 8<sup>th</sup> Defendant – Appellants - J. C. Boange with A. Gurugalgoda**  
**Plaintiff – Respondent – Jaliya de Silva**  
**9<sup>th</sup> Defendant – Respondent – Pasindu Silva**

**ARGUED ON: 21.03.2017**

**WRITTEN SUBMISSIONS – 1<sup>st</sup> – 8<sup>th</sup> Defendant – Appellants – 30.05.2017**

**Plaintiff – Respondent – 30.05.2017**

**9<sup>th</sup> Defendant – Respondent – 30.05.2017**

**DECIDED ON:** 28.07.2017

**S. DEVIKA DE LIVERA TENNEKOON J**

The Plaintiff – Respondent (hereinafter referred to as the Respondent) instituted action in the District Court of Mount Lavinia by her Plaint dated 03. 08.1995 to partition the land in the Schedule to thereto amongst the 1<sup>st</sup> – 8<sup>th</sup> Defendant - Appellants (hereinafter referred to as the Appellants), the 9<sup>th</sup> Defendant – Respondent (hereinafter referred to as the 9<sup>th</sup> Defendant) and the Respondent.

The Appellants filed as joint statement of claim dated 30.09.1996 praying for *inter alia* a dismissal of the Plaint and for their share of the corpus as prayed for therein. The 9<sup>th</sup> Defendant claimed 1/3<sup>rd</sup> of the corpus by statement of claim dated

30.09.1996. Trial commenced by a recording of three admissions and three issues were raised on behalf of the Respondent and three issues were raised on behalf of the Appellants on 24.04.1997.

Upon conclusion of the trial the learned District Court Judge pronounced judgment dated 28.07.1997 in favour of the Respondent and held *inter alia* to partition the corpus as per the shares described in the Plaint.

Being aggrieved by the said judgment the Appellants have preferred the instant Appeal by Petition of Appeal dated 0309.1997 praying for *inter alia* to set aside the order of the learned District Court Judge.

The main point of contention in this case is, as reflected by issue No. 4, whether the transferor of Deed bearing No. 733 dated 18.10.1979 one A.M. de Alwis, had the proper mental capacity to execute the said deed. The Appellants contend that the transferor did not have the required mental capacity to execute the said deed and as such that the said deed is void.

Upon conclusion of the trial the learned District Court Judge answered the above issue affirmatively, and found that the said transferor was mentally fit at the time of executing the said deed.

The main contention of the Appellant is that the learned District Judge has rejected the application of the Appellants to lead medical evidence which amounts to a denial of justice to the detriment of the Appellants. The Appellants therefore submit that this case be remitted to the original Court for a *trial de novo*.

This contention must however fail as the Appellants have failed to appeal the order of the learned District Judge which rejected the said application and the Appellants have failed to pray to set aside the said order in their Petition of Appeal.

In any event it is clear that the Notary who executed the deed in question has stated in evidence that the said transferor did possess the required mental capacity to execute the said deed. The transferee of the said deed has also given evidence in support of this position. However it is evident that the evidence presented at trial on behalf of the Appellants have failed in consistency and further failed to prove mental capacity or the lack thereof.

In the case of *Alwis Vs. Piyasena Fernando* 1993 [1] SLR 119 has held that “it was well established that findings of primary facts by a trial judge who hears and sees witnesses are not to be lightly disturbed in appeal.”

The learned District Judge has carefully considered the material placed before him at trial and come to the findings as articulated in his judgment dated 28.07.1998 and pronounced judgment in favour of the Respondents.

In the circumstances morefully discussed above, I see no reason to interfere with the judgment dated 28.07.1997 of the learned District Judge of Mount Lavinia.

*Appeal Dismissed.*

Judge of the Court of Appeal

**M.M.A. GAFFOOR J.**

I Agree.

Judge of the Court of Appeal